

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAPAG-LLOYD AG,

14-cv-9949 (VEC)

Plaintiff,

- against -

U.S. OIL TRADING LLC, O.W. BUNKER
GERMANY GMBH, and ING BANK N.V.,

Defendants.

U.S. OIL TRADING LLC,

15-cv-6718 (VEC)

Plaintiff,

- against -

M/V VIENNA EXPRESS, her tackle, boilers,
etc., *in rem*, and M/V SOFIA EXPRESS, her
tackle, boilers, etc., *in rem*,

Defendants.

HAPAG-LLOYD AG, as claimant to the
in rem defendant M/V VIENNA EXPRESS,

Third-Party Plaintiff,

- against -

O.W. BUNKER GERMANY GMBH, and
ING BANK N.V.,

Third-Party Defendants.

**O.W. BUNKER GERMANY GMBH'S
NOTICE OF MOTION FOR SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Law, its Local Civil Rule 56.1 Statement, the Declarations of Justin M. Heilig and Dr. Matthias Kampshoff both dated May 13, 2016, the exhibits annexed thereto, any reply papers served hereafter, and all pleadings and prior proceedings had herein, defendant/third-party defendant/interpleader claimant/counterclaimant O.W. Bunker Germany GmbH (“OW Germany”), pursuant to Rule 56 of the Federal Rules of Civil Procedure, will move this Court, before the Honorable Valerie E. Caproni, at the Thurgood Marshall U.S. Courthouse for the Southern District of New York, 40 Foley Square, Courtroom 443, New York, NY 10007, for summary judgment on: (a) its interpleader claims against Surety Bond No. SNO0000012 (the “Bond”) in action 14-cv-9949 for non-payment of the invoices issued by OW Germany for the bunkers delivered to the M/V SEASPACE HAMBURG and M/V SOFIA EXPRESS; (b) its counterclaims against Hapag-Lloyd AG (“Hapag”) in action 14-cv-9949 for the amounts due and owing to OW Germany but not covered by the Bond, including contractual interest at a rate of 12% per annum; and (c) its counterclaims against Hapag in actions 14-cv-9949 and 15-cv-6718 for non-payment of the invoice issued by OW Germany for the bunkers delivered to the M/V VIENNA EXPRESS.

In addition, OW Germany will move the Court for an Order directing that any funds from either the Bond surety or Hapag be disbursed in a manner agreed upon with ING Bank N.V. (“ING”) pursuant to and in accordance with the Cooperation Agreement between OW Germany and ING.

Dated: New York, New York
May 13, 2016

McDERMOTT WILL & EMERY LLP

/s/ Timothy W. Walsh

Timothy W. Walsh
Darren Azman
340 Madison Avenue
New York, New York 10173
Telephone: (212) 547-5400
Facsimile: (212) 547-5444

-and-

HILL RIVKINS LLP

/s/ Justin M. Heilig

Justin M. Heilig
Anthony J. Pruzinsky
45 Broadway, Suite 1500
New York, New York 10006
Telephone: (212) 669-0600
Facsimile: (212) 669-0698

Attorneys for O.W. Bunker Germany GmbH

To:

John Keough, Esq.
Casey Burlage, Esq.
Clyde & Co US LLP

Bruce Paulsen, Esq.
Brian Maloney, Esq.
Seward & Kissel LLP

Michael Fernandez, Esq.
Gina Venezia, Esq.
Michael Dehart, Esq.
Freehill Hogan & Maher LLP

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2016, I caused the foregoing document to be filed on the Court's CM/ECF System for electronic service on all counsel of record in this action.

/s/ Justin M. Heilig